

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 95-32

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of T.C.A. Section 67-6-206 to business principally engaged in anodizing aluminum provided by customers.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department but applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

The taxpayer is in the business of anodizing aluminum. Anodizing is a electrolytic process through which a protective oxide film is applied to metal. Approximately twenty percent of the taxpayer's business consists of buying raw aluminum and anodizing it for

sale. Approximately eighty percent of the taxpayer's business consists of anodizing aluminum provided by customers.

QUESTION

Whether the taxpayer is a manufacturer as defined at T.C.A. Sections 67-6-206 and 67-1-102(12).

RULING

The taxpayer is a manufacturer under the definitions provided by T.C.A. Sections 67-6-206 and 67-1-102(12).

ANALYSIS

T.C.A. Section 67-6-206 provides certain exemptions and reduced tax rates for manufacturers. A "manufacturer" is defined "as one whose principal business is fabricating or processing tangible personal property for resale." T.C.A. § 67-6-206(b)(2). T.C.A. Section 67-6-102(12) provides a similar definition in regard to industrial machinery. If at least 51 percent of a taxpayer's revenues at a given location are derived from fabricating or processing tangible personal property for resale, then the taxpayer is considered to be a manufacturer at that location. *Tennessee Farmers Cooperative v State*, 736 S.W.2d 87, 91-92 (Tenn. 1987). The initial issue then is whether the activity performed by the taxpayer constitutes "fabricating or processing."

"Fabricating or processing" is not defined by the sales tax statutes; consequently, the phrase must be given its ordinary and commonly accepted meaning. *The Beare Co. v. Department of Revenue*, 858 S.W.2d 906 (S. Ct. 1993). In *The Beare Co.* the Court quotes the following definition:

["Processing" is] essentially a transformation or conversion of materials or things into a different state or form from that in which they originally existed - the actual operation incident to changing them into marketable products.

Applying the law to the facts of the case, the *Beare Co.* court held that a taxpayer engaged in freeze-drying food for storage was entitled to the manufacturer's exemptions under T.C.A. Section 67-6-206.

Under the present facts, giving the phrase "fabricating or processing" its common and ordinary meaning, anodizing aluminum constitutes a conversion of materials which is "fabricating or processing" within the meaning of the statute.

The next issue is whether the taxpayer's activity meets the statutory requirement that fabricating or processing be "for resale." Only twenty percent of the taxpayer's business consists of purchasing raw aluminum and reselling anodized aluminum. The principal activity of the business is anodizing aluminum provided by customers for a charge. The determinative question then is whether this principal activity meets the requirement that the fabrication or processing be for resale. The term "sale" is defined by T.C.A. Section 67-6-102 to mean "any transfer of title or possession, or both, exchange, barter, lease or rental, conditional, or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work" T.C.A. Section 67-6-102 (emphasis added). Clearly, under this definition, anodizing customer-furnished aluminum constitutes a taxable sale. Such activity therefore meets the resale requirements of T.C.A. Sections 67-6-206 and 67-6-102(12) (industrial machinery). This taxpayer is therefore principally engaged in the business of fabricating or processing tangible personal property for resale and upon proper application to the department would be entitled to the exemptions provided by T.C.A. Section 67-6-206 for purchases of industrial machinery and energy fuels and water.

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APPROVED: Ruth Johnson, Commissioner

DATE: 9/25/95

